IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1453 OF 2004
IN
APPEAL FROM ORDER NO. 996 OF 2004

Shantaben Purshottam patel. ... Applicant.
Versus.
Mumbai Municipalo Corporation. ... Respondents.

Shri V.B.Naik with Shri Bharat Joshi for the Applicant.

Shri N.V.Walavalkar with Shri J.Xavier for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 2nd February, 2005.

P.C.:

1. Rule. The Respondents waive service. Prayer clause

(a) of the Civil Application reads thus:

> (a) Pending the hearing and final disposal of this suit, the Respondents, their agents, servants, employees, officers, person or persons claiming through them, be restrained by temporary order of injunction of this Hon'ble Court from interfering, objecting or, obstructing the Appellant from carrying on business of Umesh Cattle Farm of milching cattles and also from seizing any articles, assets, moveables, or removing any cattles, animals, or livestock from the suit premises

"13, Lalji Mavji Stable, Patel Nagar, Road No.4, M.G.road, Kandivali (West), Mumbai 400 067."

2. It is an admitted position that the Appellant/Applicant applied for a licence under section 394 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the said Act of 1888) for conducting business in the stable situated in the property in dispute. The Application for grant of licence has been rejected. There is a notice issued by the Respondent-Corporation under section 394(4) of the said Act of 1888 to the Appellant. The Appellant had been called upon to discontinue the use of the suit premises for carrying on the business.

3. The learned Counsel appearing for the Appellant submitted that the Appellant is holding a licence granted by the State Government under Rule 4 of the Maharashtra Keeping and Movement of Cattle in Urban Areas (Control) Rules, 1976 and therefore, licence under section 394 is not required to be obtained from the Respondent-Corporation. Considering the provisions of the said Rules as well as section 394 of the said Act of 1888, prima facie, I am of the view that the licence under section 394 is required to be obtained for carrying on the business activities which the Appellant is carrying on. The effect of granting the prayer made

in this Civil Application is that the Appellant will be permitted to run the business without there being any licence in his favour under section 394 of the said Act of 1988. In the absence of such licence being granted in favour of the Appellant, such a prayer cannot be granted.

4. At this stage, the learned Counsel appearing for the Appellant stated that against the order passed by the Respondent-Corporation rejecting the application for grant of licence, the Appellant has preferred an Appeal bearing No.112 of 2004 before the Small Causes Court at Bombay and the same is pending. He submitted that if the interim relief is not granted, further coercive action will be taken by the Respondent-Corporation in terms of notice dated 21st April 2004 under section 394(4) of the said Act of 1888. He stated that considering the fact that there is a cattle consisting of 15 buffaloes, sufficiently longer time may be granted by this Court to remove the cattle. The Appellant is ready and willing to give undertaking to that effect. He submitted that the hearing of the appeal pending in the Small Causes Court may be expedited and in case the Appellant succeeds in the Appeal he may be permitted to apply for appropriate interim relief in this Appeal notwithstanding the rejection of the Application.

5. The learned Counsel appearing for the Respondents

submitted that in case the Appellant is ready and willing to give undertaking to that effect, reasonable time not exceeding three months may be granted.

6. As the Appellant has shown readiness and willingness to shift and remove cattle from the suit premises without prejudice to his rights and contentions in the pending Appeal and has also shown willingness to give undertaking to that effect, reasonable time deserves to be granted to the Appellant to remove the cattle. Considering the fact that the Appellant will require sometime to acquire premises elsewhere, I am inclined to grant time upto 31st May 2005.

7. Hence the following order is passed:

(i) The Civil Application is rejected with no order as to costs.

(ii) If the Appellant gives an undertaking to this Court within a period of two weeks from today to remove the cattle from the suit premises on or before 31st May 2005, till 31st May 2005 the Respondent-Corporation will not take any coercive action as contemplated by section 394(4) of the said Act of 1888 against the Appellant. It is made

clear that if the Appellant fails to file undertaking within the stipulated period of two weeks, the Respondent-Corporation will be free to take action in accordance with the law against the Appellant. If the undertaking is not complied with by the Appellant without prejudice to the other remedies, the Respondent-Corporation will be free to take action in accordance with the law against the Appellant. It is made clear that the undertaking filed by the Applicant and his action of removing the cattle will be without prejudice to the rights and contentions of the Appellant in the Appeal and in the pending suit.

(iii) The hearing of the Appeal No.112 of 2004 pending before the Court of Small Causes at Bombay is expedited and the concerned Judge will decide the same on or before 31st August 2005.

(iv) In the event the Appellant succeeds in the said Appeal No.112 of 2004, liberty to the Appellant to apply for appropriate interim relief in this

appeal.

(v) Parties to act on an authenticated copy of this order.

Judge.

-